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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

MICHAEL JOHNSON,

Plaintiff,

vs.

ON-SITE MANAGER, INC.,

Defendant.

Case No.: 5:15-CV-04409-NC

**DEFENDANT ON-SITE MANAGER,  
INC.'S NOTICE OF MOTION AND  
MOTION TO DISMISS PLAINTIFF'S  
COMPLAINT PURSUANT TO *FED.  
R. CIV. PROC.* 12(b)(6);  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF.**

Complaint filed: September 23, 2015

Trial Date: None

Hearing Date: February 10, 2016

Time: 1:00 pm

Courtroom.: 7 – 4<sup>th</sup> Floor

Judge: Hon. Nathaniel M.  
Cousins

**NOTICE OF MOTION**

**TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that on February 10, 2016 or as soon as this matter may be heard in Courtroom 7 of the above-entitled court, Defendant ON-SITE

MANAGER, INC. (“Defendant”) will move the Court for an Order dismissing the two causes of action in Plaintiff MICHAEL JOHNSON’s Complaint in this matter.

Specifically, Defendant will move this Court to dismiss the Complaint’s two causes of action for alleged violations of the Fair Credit Reporting Act and the Consumer Credit Reporting Agencies Act, for failure to state a claim upon which relief may be granted.

The motion will be made under *Fed. R. Civ. Proc.* 12(b)(6) and is based on the fact that Plaintiff MICHAEL JOHNSON (“Plaintiff”) has failed to state a proper claim for relief on the aforementioned causes of action.

The motion will be based on the memorandum of points and authorities, the records on file in this action, those matters of which this Court may and must take judicial notice, and any further evidence and argument that may be presented at the hearing on this motion.

Dated: December 22, 2015

**Jacobson, Russell, Saltz, Nassim & de la Torre, LLP**

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## MOTION TO DISMISS

Defendant ON-SITE MANAGER, INC. (“Defendant”) hereby does move the Court for an Order dismissing the two counts in the Complaint in this matter.

Defendant moves this Court to dismiss Plaintiff’s first cause of action for an alleged violation of the Fair Credit Reporting Act for failure to state a claim upon which relief may be granted. As there is no allegation that Defendant has violated the 15 U.S.C. § 1681e(b) requirement that a Consumer Reporting Agency “follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates,” Plaintiff fails to state a cause of action. Specifically, Plaintiff does not allege any failure by Defendant to either maintain, or follow, reasonable procedures when reporting information, and therefore Plaintiff fails to allege any cause of action under 15 U.S.C. § 1681e(b). Simply reporting inaccurate information is not a violation of the FCRA.

Defendant also moves this Court to dismiss Plaintiff’s second cause of action for alleged violations of the Consumer Credit Reporting Agencies Act for failure to state a claim, as there has been no allegation of any violation of *Cal. Civ. Code* §§ 1785.13(a)(6) (reporting on criminal information antedating the report by seven years), 1785.14(b) (maintenance of reasonable reporting procedures) or 1785.18(b) (reporting for employment purposes). Plaintiff fails to state any cause of action as he neither complains of any criminal reporting, nor is there any allegation as to any failure to maintain reasonable procedures during the reporting process, and finally Plaintiff makes no allegation that the issued report deals with any application for employment.

This motion is made under *Fed. R. Civ. Proc.* 12(b)(6) and is based on the fact that Plaintiff MICHAEL JOHNSON (“Plaintiff”) has failed to state a proper claim for relief on the aforementioned causes of action.

The motion will be based on the memorandum of points and authorities, the records on file in this action, those matters of which this Court may and must take



**MEMORANDUM OF POINTS AND AUTHORITIES**

**1. INTRODUCTION**

This case involves allegations by Plaintiff MICHAEL JOHNSON (“Plaintiff”) against Defendant ON-SITE MANAGER, INC. (“Defendant”) arising out of a single tenant screening report issued by Defendant containing information about Plaintiff.

Defendant is a consumer reporting agency that “provides background and employment screening services, risk-management services and products, information management products and services, and decisions-making intelligence.” [See Complaint, Docket No. 1 (“DN”) at ¶ 5].

Plaintiff alleges that Defendant “has been reporting derogatory and inaccurate statements and information relating to Plaintiff and Plaintiff’s tenant and rental history to third parties.” [DN 1, ¶ 6]. Plaintiff further alleges that the “inaccurate information includes a ‘civil action for possession’ judgment....” [DN 1, ¶ 7]. Plaintiff likewise did not identify the information he alleges to be “inaccurate”. Interestingly, these two statements concern the sum and substance of the “facts” alleged to be the basis for his causes of action under the Fair Credit Reporting Act (“FCRA”) and the California Consumer Credit Reporting Agencies Act (“CCRAA”).

Plaintiff’s “facts” as pled are insufficient to state any case of action against Defendant because they fail to state that any specific violations of FCRA or CCRAA occurred. Namely, the Complaint sues under statutory schemes that have no relation to the allegations in the Complaint, and furthermore Plaintiff fails to allege that the dissemination of alleged inaccurate information was due to Defendant’s failure to follow reasonable procedures.

As such, for the reasons stated herein, Plaintiff’s two causes of action for violations of the FCRA and CCRAA fail as a matter of law and must be dismissed by this Court.

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## 2. STANDARD OF REVIEW

Any defendant to a complaint, counterclaim, or crossclaim may move to dismiss under *Federal Rule of Civil Procedure* 12(b)(6) for “failure to state a claim upon which relief can be granted.” [See *Fed. R. Civ. Proc.* 12(b)(6)]. A motion to dismiss under Rule 12(b)(6) must be granted when the facts as pleaded are not legally sufficient to set forth a claim for relief. [See *National Association for the Advancement of Psychoanalysis v. California Board of Psychology* (9th Cir. 2000) 228 F.3d 1043, 1049].

Dismissal under Rule 12(b)(6) is proper if the claim lacks a required element. The factual allegations do not need to be detailed, but they must be sufficient to “raise a right to relief above the speculative level . . . .” [*Bell Atlantic Corp. v. Twombly*, (2007) 550 U.S. 544, 555]. A claim has “facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” [*Ashcroft v. Iqbal*, (2009) 556 U.S. 662, 678].

While a court must draw all reasonable inferences in the plaintiff’s favor, it need not “necessarily assume the truth of legal conclusions merely because they are cast in the form of factual allegations.” [*Warren v. Fox Family Worldwide, Inc.*, (9th Cir. 2003) 328 F.3d 1136, 1139]. In fact, no legal conclusions need to be accepted as true. [*Ashcroft*, 556 U.S. at 678]. A complaint doesn’t suffice “if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” [*Id.*] That includes a mere formulaic recitation of the elements of a cause of action; this will not do either. [*Twombly*, 550 U.S. at 555].

While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions. [*Id.* at 548]. Allegations of material fact are accepted as true, but conclusory allegations of fact or law are not. [*Spewell v. Golden State Warriors* (9th Cir. 2001) 266 F.3d 979, 988].

1 **3. ARGUMENT**

2 **A. THE FIRST CAUSE OF ACTION FOR VIOLATION OF THE FCRA**  
 3 **FAILS TO STATE A CLAIM FOR RELIEF**

4 **1) Plaintiff Must Allege A Failure To Maintain Or Follow**  
 5 **Reasonable Procedures To State A Cause Of Action**

6 In his Complaint, Plaintiff broadly alleges negligent and willful violations of 15  
 7 U.S.C. § 1681e(b), but Plaintiff fails to provide any facts to support such legal  
 8 conclusions masked as allegations.

9 15 U.S.C. § 1681e(b) states in part that:

10 "...Whenever a consumer reporting agency prepares a consumer report  
 11 it shall follow reasonable procedures to assure maximum possible  
 12 accuracy of the information concerning the individual about whom the  
 13 report relates."

14 [*Id.*].

15 The required elements to state a claim for noncompliance with 15 U.S.C. §  
 16 1681e(b), are that: "(1) inaccurate information was included in a consumer's credit  
 17 report; (2) **the inaccuracy was due to defendant's failure to follow reasonable**  
 18 **procedures to assure maximum possible accuracy**; (3) the consumer suffered injury;  
 19 and (4) the consumer's injury was caused by the inclusion of the inaccurate entry."  
 20 [*Philbin v. Trans Union Corp.*, (1996) 101 F.3d 957, 963 (*emphasis added*)].

21 Thus, in order to state a claim for noncompliance with 15 U.S.C. § 1681e(b),  
 22 Plaintiff must allege that the inaccuracy of the reported information was due to  
 23 defendant's **failure to follow reasonable procedures to assure maximum possible**  
 24 **accuracy**. [*Sarver v. Experian Info. Solutions* (2004) 390 F.3d 969 (Summary  
 25 judgment in favor of credit reporting agency on borrower's claim that credit reporting  
 26 agency violated 15 U.S.C. § 1681e(b) was appropriate since court found that there was  
 27 nothing in record to show that credit reporting agency's procedures were  
 28 unreasonable)]. **Even if the report is proved to contain inaccurate information, a**



1 claim for violation of 15 U.S.C. § 1681e turns on reasonableness of agency  
 2 procedures for assuring maximum accuracy of reports. [*Stewart v. Credit Bureau,*  
 3 *Inc.* (1984) 734 F2d 47, 51]. A Plaintiff cannot rest on a showing of mere inaccuracy  
 4 alone. [*Id.*]

5 **2) There Are No Allegations To Support Plaintiff's Claims That**  
 6 **Defendant Has Failed To Comply With 15 U.S.C. § 1681e(b)**

7 Plaintiff claims that Defendant violated 15 U.S.C. § 1681e(b) by "reporting  
 8 derogatory and inaccurate statements and information relating to Plaintiff and  
 9 Plaintiff's tenant and rental history to third parties." [DN 1, ¶ 6]. However, the  
 10 Complaint does not contain ANY allegation concerning Defendant's maintenance of  
 11 any procedures, reasonable or not, "to assure maximum possible accuracy of the  
 12 information concerning the individual about whom the report relates." [*See* 15 U.S.C.  
 13 1681e(b)].

14 While the Complaint alleges, though briefly, that there exists inaccurate  
 15 information in Plaintiff's consumer credit report, it fails to allege that the perceived  
 16 inaccuracy was due to Defendant's failure to follow reasonable procedures. As stated,  
 17 Plaintiff must allege that the inaccuracy of the reported information was due to  
 18 defendant's failure to follow reasonable procedures to assure maximum possible  
 19 accuracy. [*Sarver*, 390 F.3d 969]. The FCRA does not establish a strict liability  
 20 standard for credit reporting agencies with respect to the accuracy requirement, but  
 21 requires that the credit reporting agencies act reasonable. [15 U.S.C. § 1681e].

22 Therefore, even if the subject report is alleged to contain inaccurate information,  
 23 a claim for violation of 15 U.S.C. § 1681e turns on reasonableness of agency  
 24 procedures for assuring accuracy of reports, not on the existence of any perceived  
 25 inaccuracy. [*Stewart*, 734 F2d at 51]. Plaintiff simply alleges that inaccurate facts were  
 26 reported. [*See* DN 1, ¶¶ 6-10]. Plaintiff includes no facts alleging that Defendant failed  
 27 to follow reasonable procedures to assure maximum accuracy of the information  
 28 reported. In fact, there is no mention of Defendant's procedures, whether reasonable or

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not. Plaintiff's failure to plead any allegation regarding the reasonableness of Defendant's procedures in issuing a credit report evidences that Plaintiff has failed to state a cause of action for violation of the FCRA and requires that this Court dismiss the cause of action.

**B. THE SECOND CAUSE OF ACTION FOR VIOLATIONS OF THE CCRAA FAILS TO STATE A CLAIM FOR RELIEF AND SHOULD BE DISMISSED**

Plaintiff further claims that Defendant violated three state law requirements for a consumer reporting agency, namely *Cal. Civ. Code* §§ 1785.13(a)(6), 1785.18(b) and 1785.14(b). [DN 1, ¶ 24]. However, Plaintiff's allegations not only suffer from the same defect noted above regarding the FCRA claim, Plaintiff has mistakenly, or negligently, included statutory claims that bear no relation whatsoever to the alleged violations. For the reasons set forth below, Plaintiff has failed to state a cause of action for violations of the CCRAA and therefore the second cause of action must be dismissed.

**1) There Are No Allegations to Support a Claim for Violation of *Cal. Civ. Code* § 1785.14(b)**

Similar to Plaintiff's flawed FCRA claim, this Court should dismiss Plaintiff's claim that Defendant violated *Cal. Civ. Code* § 1785.14(b) as Plaintiff again neglects to allege any failure by Defendant to maintain or follow reasonable procedures when reporting consumer information.

*Cal. Civ. Code* § 1785.14(b) states that, "Whenever a consumer credit reporting agency prepares a consumer credit report, it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates." Thus, similar to 15 U.S.C. § 1681e(b), a claim for liability under and *Cal. Civ. Code* § 1785.14(b) is predicated upon the reasonableness of a credit reporting agency's procedures in reporting credit information. [*Grigoryan v. Experian Info. Solutions, Inc.*, (2014) 84 F.Supp.3d 1044, 1049, 2014]. The fact that

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1 the information may have been inaccurate does not demonstrate that a credit reporting  
2 agency did not employ reasonable procedures to ensure the accuracy of the  
3 information under *Cal. Civ. Code* § 1785.14(b). [*Id.*].

4 Analogous to the arguments above, with relation to the alleged violations of the  
5 15 U.S.C. § 1681e(b), Plaintiff does not provide any facts or circumstances relating to  
6 Defendant's procedures in assuring the accuracy of the information it reports. Nor does  
7 Plaintiff sufficiently plead Defendant's failure to have reasonable procedures in place.  
8 No mention of any procedures are discussed in the Complaint. Plaintiff's allegations  
9 solely relate to the perceived "inaccuracy" of information, but do not touch upon the  
10 reasonableness, or even existence, or any procedures maintained or followed by  
11 Defendant in reporting such information.

12 As such, this Court must dismiss the second cause of action as Plaintiff has  
13 failed to allege a critical element for violation of the CCRAA under Section  
14 1785.14(b).

15 **2) There Are No Allegations to Support a Claim for Violation of *Cal.***  
16 ***Civ. Code* § 1785.13(a)(6)**

17 Regarding Plaintiff's allegation that Defendant has violated *Cal. Civ. Code* §  
18 1785.13(a)(6), such claims fail on their face as Plaintiff has failed to plead any relevant  
19 facts to support this claim.

20 Specifically, *Cal. Civ. Code* § 1785.13(a)(6) states:

21 "1785.13 (a) No consumer credit reporting agency shall make any consumer  
22 credit report containing any of the following items of information

23 ...

24 (6) Records of arrest, indictment, information, misdemeanor complaint, or  
25 conviction of a crime that, from the date of disposition, release, or parole,  
26 antedate the report by more than seven years. These items of information shall  
27 no longer be reported if at any time it is learned that in the case of a conviction a  
28

1 full pardon has been granted, or in the case of an arrest, indictment, information,  
2 or misdemeanor complaint a conviction did not result.”

3 [*Id.*]

4 While Plaintiff accuses Defendant of “willfully and negligently failing to  
5 comply with ... Cal. Civ. Code §1785.13(a)”, Plaintiff does not plead one fact or  
6 allegation that Defendant disseminated any information relating to Plaintiff’s criminal  
7 history. In fact, Plaintiff’s only allegation in the complaint regarding the contents of  
8 the unattached consumer report relates to a “‘civil action for possession’ judgment and  
9 personal identifying information”. [DN 1, ¶ 7]. There is no mention of, or even  
10 reference to, the reporting of any criminal record, criminal history or records of arrest,  
11 indictment, information, misdemeanor complaint or conviction of a crime, as  
12 contemplated by *Cal. Civ. Code* § 1785.13(a)(6).

13 As there are no allegations or facts to support a claim for violation of *Cal. Civ.*  
14 *Code* § 1785.13(a)(6), the cause of action under this theory must be dismissed.

15 **3) There Are No Allegations to Support a Claim for Violation of *Cal.***  
16 ***Civ. Code* § 1785.18(b)**

17 Finally, much like the claim regarding reporting of criminal information, the  
18 Complaint contains no facts to support an allegation that Defendant has violated *Cal.*  
19 *Civ. Code* § 1785.18(b) with regards to reporting for employment purposes.

20 *Cal. Civ. Code* § 1785.18(b) deals with a consumer credit reporting agency that  
21 furnishes a consumer credit report for employment purposes and states:

22 “A consumer credit reporting agency which furnishes a consumer credit report  
23 for employment purposes, and which for that purpose compiles and reports  
24 items of information on consumers which are matters of public record and are  
25 likely to have an adverse effect upon a consumer's ability to obtain employment  
26 shall, in addition, maintain strict procedures designed to ensure that whenever  
27 public record information which is likely to have an adverse effect on a  
28 consumer's ability to obtain employment is reported it is complete and up to

1 date. For purposes of this paragraph, items of public record relating to arrests,  
 2 indictments, convictions, suits, tax liens, and outstanding judgments shall be  
 3 considered up to date if the current public record status of the item at the time of  
 4 the report is reported.”

5 [*Cal. Civ. Code* § 1785.18(b)].

6 Here, as above, Plaintiff makes no mention whatsoever regarding the consumer  
 7 report having been generated for employment purposes. In fact, the Complaint states  
 8 that the consumer report was disseminated to prospective landlords and that, “Plaintiff  
 9 has applied for and has been denied housing opportunities” allegedly based on the  
 10 consumer report furnished by Defendant. [DN, ¶ 10]. The report, as alleged by Plaintiff  
 11 was, and is, intended for use in obtaining housing. There is no mention of employment.

12 Therefore, and for the same reasons as discussed above, this claim fails as a  
 13 matter of law as the facts pled are not sufficient to support a claim for violation of *Cal.*  
 14 *Civ. Code* § 1785.18(b). This Court must therefore dismiss the claim.

#### 15 4. CONCLUSION

16 As stated herein, the Complaint on its face fails to state a proper cause of action  
 17 under either the FCRA or the CCRAA. Plaintiff has completely failed to allege the  
 18 proper elements of each claim and therefore Defendant respectfully requests that this  
 19 Court grant this motion and dismiss the subject complaint in its entirety.

20  
 21 Dated: December 22, 2015

22  
 23 **Jacobson, Russell, Saltz, Nassim & de la Torre, LLP**

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 25 \_\_\_\_\_/S/\_\_\_\_\_  
 26 Michael J. Saltz, Esq.  
 27 Attorneys for Defendant On-Site Manager, Inc.  
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